STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	:	08-0619
Central Illinois Public Service Company d/b/a AmerenCIPS	:	08-0620
Illinois Power Company d/b/a AmerenIP	:	08-0621
Proposal to implement a combined Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) service. (Tariffs filed September 30, 2008).	:	(Cons.)

REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned proceeding.

I. INTRODUCTION

In this proceeding, the Commission is investigating the September 30, 2008 revised tariffs to implement a combined Utility Consolidated Billing ("UCB") and Purchase of Receivables ("POR") service ("UCB/POR" or "UCB/POR Program") for the benefit of retail customers and retail electric suppliers ("RES"), pursuant to Section 16-118 of the Illinois Public Utilities Act (the "Act"), "Services provided by electric utilities to alternative retail electric suppliers," 220 ILCS 5/16-118, filed by the Ameren Illinois Utilities, Central Illinois Light Company d/b/a AmerenCILCO ("CILCO"), Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP ("IP") (collectively, "Ameren", the "Companies", or "AIU"). Initial Briefs ("IB") in this matter were filed on April 29, 2009, by the People of the State of Illinois (the "AG"), Staff, the Citizens Utility Board ("CUB"), Dominion Retail, Inc. ("Dominion" or "DRI"), the Illinois Competitive Energy Association/Retail Energy Supply Association ("ICEA/RESA"), and Ameren.

Staff's Initial Brief identified and responded to many if not most of the arguments raised in the parties' Initial Briefs. In this Reply Brief, Staff has incorporated many of those responses by reference or citation to Staff's Initial Brief. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff's Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's Initial Brief because further or additional comment is neither needed nor warranted. As explained in detail below and in Staff's Initial Brief, the arguments raised by certain parties lack merit and must be rejected.

II. RESOLVED ISSUES

G. Informational Filing

Ameren mischaracterizes Staff's position regarding the UCB/POR Discount Rate Informational Filing the Companies committed to provide to the Commission on their 3rd Revised Sheet No. 5.024 of the STC tariff. In its Initial Brief and testimony, Staff clearly stated that any changes to the Informational Filing must be strictly related to the Commission's Final Order in this proceeding. (Staff IB, p. 12; ICC Staff Exhibit 8.0, p. 6) However, in its Initial Brief, Ameren states that the Companies "reserve[d] the right to make any changes, edits or modifications that are needed to be in compliance with the Commission's Final Order, or any other changes needed to implement and facilitate the UCB/POR Program." (Ameren IB, p. 6) Staff never agreed that Ameren could unilaterally alter the Informational Filing in order to make "any other changes needed to implement and facilitate the UCB/POR Program." As a result, Staff recommends that the Commission order Ameren not to make changes to the Informational Filing unless those changes are necessary to achieve compliance with the Commission's Final Order in the instant proceeding.

K. Other

3. Additional Resolved Issues – Revise UDC

Ameren's proposal to revise the Uncollectible Cost Component ("UDC") pursuant to changes in Commission-approved uncollectible expenses (Ameren Exhibit 4.0-2REV, pp. 8-9; Ameren Exhibit 8.0, pp. 6-7) and supported by Staff witness Clausen (ICC Staff Exhibit 7.0, p. 2) is considered by Ameren to be a "Resolved Issue." (Ameren IB, p. 7) While the AG considers the same issue to be an "Unresolved Issue," the AG's discussion appears to indicate agreement with Ameren's proposal. (AG IB, p. 6) Moreover, Staff supported Ameren's proposal to revise the UDC pursuant to changes in Commission-approved uncollectible expenses and agreed with Ameren that "in order to minimize future controversy and to adhere to cost causation principles, this cost component should be based on a Commission approved level of uncollectible expense."

(Staff IB, p. 20) Hence, Staff does not view this be an "Unresolved Issue."

III. UNRESOLVED ISSUES

A. Discount Rate

1. Staff's Balance Factor Proposal

As Ameren points out in its IB, there are several areas of agreement regarding the various discount rate proposals. (Ameren IB, p. 8) Ameren's primary remaining objection to Staff's proposed Balance Factor is that it "could unnecessarily discourage participation in the program." (*Id*., p. 9) Ameren also complains that creating the cushion described by Staff witness Clausen is "unnecessary, because the Initial Rate Period will only be between two and a half and three years in length." (*Id*.)

Starting with Ameren's secondary argument first, the fact that "the Initial Rate Period will only be between two and a half and three years in length," misses the point altogether. As Mr. Clausen explained, Ameren's proposed initial discount rate covered only its current UDC level. (ICC Staff Exhibit 7.0, p. 2) Consequently, any change to Ameren's UDC level would require a change in the discount rate. (*Id*.) Ameren, like other large utilities, has recently been filing rate cases annually, in large part because of the rising level of uncollectible expenses due to the current overall economic environment. Ameren's argument that the Balance Factor is not needed because the Initial Rate Period will only be up to three years in length ignores the fact that Ameren could have two updates to its Commission-approved uncollectible expenses in that time period. Under Ameren's rigid proposal, any change to the UDC factor would require a change to the discount rate. (*Id*.) On the other hand, Staff's Balance Factor proposal provides the possibility to leave the discount rate unchanged while still addressing fluctuating UDC levels, creating the opportunity to initially recover a larger share of the UCB/POR costs from RES taking the service, while also allowing Ameren the opportunity to recover its uncollectible expenses. (*Id*., p. 8) The flexibility inherent in Staff's proposed Balance Factor provides stability and a degree of predictability for a RES in deciding on whether or not to enter this emerging market.[1] Thus, Ameren's argument that the Balance Factor is not needed would appear to be inconsistent with its primary argument that the Balance Factor would unnecessarily discourage participation in the UCB/POR Program. This degree of predictability that the Balance Factor provides should encourage RES to participate in the UCB/POR Program, not "unnecessarily discourage participation."

Staff shares Ameren's concern about setting the discount rate at a level that would discourage suppliers from using the UCB/POR service. (*Id*., p. 4) Such a concern is the main reason Staff recommends rejecting the Fair Cost Allocation Adjustment ("FCAA") proposal advanced by CUB witness Thomas. (*Id.*) By comparing POR discount rate levels in other jurisdictions, Staff is aware that its proposed 1.5% is on the higher end of the spectrum, but at the same time it still falls in the range provided by ICEA/RESA witness Cerniglia. (*Id.*)

DRI withdrew its objection to Ameren's proposed discount rate as part of a Memorandum of Understanding ("MOU") with ICEA, RESA, and Ameren, but continues

[1] *See e.g.*, ICEA/RESA Exhibit 1.0 Revised, p. 18 ("[T]he Commission fostered certainty in the energy markets and, in doing so, provided the conditions necessary for businesses to enter into multi-year retail contracts, allowing them to hedge their supply procurement."); ICC Staff Exhibit 3.0, p. 9 ("First, I recommend that the Commission ensure a certain stability of the discount rate over time. Electric supplier participation in the UCB/POR program can be expected to be higher when a RES is able to predict one of its major expenses over the long term.")

to object to Staff's proposed Balance Factor. (DRI IB, p. 6) Besides the concern that a 1.5% discount rate level might discourage suppliers from participating, which is addressed above, DRI claims that "it is unclear how an over-recovery of funds would be handled and how a changing rate will entice suppliers to participate in UCB/POR when their discount rate could change based on unplanned variations of factors other than uncollectible expenses." (*Id.*) First, under Ameren's proposal, which DRI now supports, the discount rate has an even greater risk of being changed during the initial rate period. That is because any change in Ameren's Commission-approved uncollectible expenses will force the discount rate to be changed. Under Staff's proposal that is not the case because the inclusion of a Balance Factor allows for the possibility of leaving the discount rate unchanged during the Initial Rate Period, even if and when the UDC changes as a result of changes to the Commission-approved uncollectible expenses. (ICC Staff Exhibit 7.0, p. 2)

Second, Staff has not proposed to change the initial discount rate "based on unplanned variations of factors other than uncollectible expenses." (DRI IB, p. 6) If DRI is instead referring to potential changes to the discount rate at the end of the Initial Rate Period, it should be pointed out that Ameren's proposed tariffs make it clear that changes to components other than uncollectible expenses are a definite option during the proposed reconciliation proceedings. The Third Revised Sheet No. 5.021 states that the EPR (Estimated UCB/POR Program Receivables purchased from the RES) amount "shall be projected for the period that corresponds to the period for which the rate will be in effect." In addition, the same tariff sheet provides that "the initial assignment of the UCB related portion of the UCB/POR Program Start-Up Cost shall be

25% to the RES recovered via the UCB/POR Discount Rate; and 75% to Eligible Customers recovered via the Supplemental Customer Charges tariff per Factor USC of the UCB/POR Program Charge." Similarly, Ameren's original proposed Third Revised sheet No. 5.026 states that during the reconciliation process "the estimate of Customer load enrolling to RES service and participating in the UCB/POR Program may be revised based on updated forecasts. The result of this analysis would be used to update the UCB Start-Up Cost, POR Start-Up Cost and Ongoing Administrative Cost components of the UCB/POR Discount Rate on a prospective basis." Staff recommended, and Ameren agreed, to change the last sentence to state that "the result of this analysis could be used to update the USD, PSD, and Oadm components of the UCB/POR Discount Rate on a prospective basis." (Ameren Exhibit 4.0-2REV, p. 7) Thus, there was never any doubt that changes to components other than the uncollectible expense component could occur during future reconciliation proceedings. To not have this flexibility would lock-in the initial 75% / 25% UCB start-up cost split and would not allow the Commission to ensure that the discount rate level does not become unreasonably high or low subsequent to the Initial Rate Period.

Third, Staff is not entirely sure what DRI means when it states that it "is unclear how an over-recovery of funds would be handled." (DRI IB, p. 6) Staff assumes that DRI is referring to concerns raised by Ameren earlier in this proceeding. Ameren, however, has acknowledged that its concerns were fully addressed by Staff. (Ameren Exhibit 8.0, p. 8) ("[T]he modification to the Balance Factor proposed by Mr. Clausen does address the concerns about how the Balance Factor would operate along side AIU's proposed reconciliation mechanism.")

2. CUB's FCAA Proposal

CUB argues that "the FCAA is the only way to adequately ensure that the true cost of retail choice is born by those who utilize the program" (CUB IB, p. 4), that "the discount rates advocated by AIU, Staff, and the RES community all presume that eligible retail customers should subsidize RES entry into AIU's service territory" (*Id*., p. 7), and that only the FCAA ensures that "subsidies are minimized because all excess revenue collected from suppliers would ultimately be refunded to eligible retail customers" (*Id*., p. 6). As Staff has pointed out in testimony and in its Initial Brief, the cost recovery proposals of Ameren, Staff, and CUB all ensure that the suppliers will bear the costs of the POR and UCB programs as they use them. (Staff IB, p. 27) Ameren's proposed cost recovery takes into account that higher UCB/POR Program participation translates into a higher share of the costs being borne by the retail electric suppliers. The same is true for Staff's recommendation to add a Balance Factor to Ameren's proposed calculations. Accordingly, CUB's proposed FCAA does not add anything new in this regard. (*Id.*)

In addition, Staff explained in testimony and in its IB that it would be hard to argue that there is such a thing as CUB's desired "accurate price signal" for the UCB and POR services. (*Id*., p. 28) Mr. Clausen explained that given that the "price" for the UCB/POR service was highly dependent upon several assumptions, it was difficult to make absolute statements about "accurate" and "inaccurate" prices for the UCB/POR service. Two of the main factors determining the level of the discount rate are the length of the cost recovery period and the number of RES customers using the UCB/POR service. A slight change to either factor creates vastly different "prices" for the UCB/POR service. (ICC Staff Exhibit 7.0, p. 19) Thus, it would be difficult for anyone to agree or disagree with absolute statements about "accurate" price signals or "full cost recovery." (CUB IB, p. 7)

For the reasons stated above and in testimony, Staff recommends that the Commission reject CUB's proposed FCAA.

3. Dominion's UCB Cost Component Proposal

Initially, DRI witness Barkas disagreed with "Ameren's inclusion in the discount rate of an allocation of 25 percent of its $2.086 million of UCB costs to ARES via the POR discount rate." (DRI IB, p. 5) However, after agreeing to a MOU with Ameren and ICEA/RESA, DRI withdrew Mr. Barkas' proposal to recover those costs through distribution rates and now supports Ameren's proposed discount rate. (*Id.*, p. 6) Staff consequently, sees no need to address this issue any further at this point.

B. Rate of Return in FCR

This section of the brief will respond to the issue of rate of return discussed in Ameren's IB. First, the Ameren IB incorrectly states that Mr. Hughes' direct testimony explained that the FCR is a cost recovery component of the UCB/POR tariffs intended to recover <u>prudently</u> incurred capital costs. (Ameren IB, pp. 11-12) To clarify, Mr. Hughes' direct testimony does not reference prudence. (*See* Ameren Exhibit 2.0) More importantly, the record did not address the exposure of UCB/POR assets to prudence risk until cross-examination and neither Staff nor Ameren addressed the size of a prudence risk premium in testimony. (Staff IB, pp. 39-40)

Generally, the Ameren IB protests the premise of Staff's analysis, which is that

UCB/POR assets are closer in risk to IP's securitized assets ("Securitization") than AIU rate base assets.[2] AIU argues:

> …Ms. Phipps' position inappropriately equates the risk associated with recovery Transitional Funding Charges ("TFC") with the risk associated with recovering the subject costs. Ms. Phipps position is untenable in large part because it simply ignores the unique statutory and regulatory context that gave rise to the TFC charges. Specifically, the TFC charges to which Ms. Phipps references are related to the securitization of certain cash flows utilized to refinance certain "stranded costs" associated with the utility industry refinancing resulting from the 1997 Illinois restructuring law.

(Ameren IB, p. 13)

As Ameren argues further, "…the cash flow collected as part of the supplemental customer charge would not be isolated, such that any AIU debt or equity holder would be protected from losses associated with AIU bankruptcy." (*Id*., p. 14) Ameren draws a distinction between UCB/POR assets and Securitization that has no bearing on the risk of cost recovery, except insofar as prudence is concerned.

Isolation of UCB/POR rider cash flows from AIU bankruptcy is irrelevant to the riskiness of the UCB/POR assets. That is, Ameren's claim that the property right associated with Transitional Funding Notes ("TFNs") is a material distinction between the UCB/POR assets and Securitization is false. (*Id*.) Staff explained that attaching a property right to IP's TFNs was necessary in order to insulate the securitized assets from the broader risk of all other utility assets. This insulation permitted IP to issue securities with interest rates that reflect the stand-alone risk of the securitized assets rather than all utility assets. The property right had no bearing on the riskiness of the

[2] IP issued AAA-rated bonds in 1998 against its securitized assets under authority granted by the Commission in Docket No. 98-0488, pursuant to Article XVIII of the Act. Ameren references Transitional Funding Charges, which are the amounts IP recovered from customers in order to make principal and interest payments on the Transitional Funding Notes. Staff and Ameren are referring to different features of the same securitized assets.

securitized asset itself. (Tr., April 6, 2009, p. 96) The only distinction between the UCB/POR assets and Securitization that is relevant in this case relates to the potential disallowance of UCB/POR costs that the Commission deems imprudent, and Staff added a premium to its rate of return recommendation to reflect this risk factor. (Staff IB, pp. 39-41)

Like Securitization, the UCB/POR Program Charge is insulated from the risk of under-recovery that exists for AIU rate base assets because cost recovery for the UCB/POR assets occurs via a tariff rider that includes reconciliations proceedings to ensure that AIU recovers all prudently incurred costs. This risk reducing cost-recovery mechanism provides insulation for UCB/POR assets from the risk of under recovery to which rate base assets are subject. Thus, it follows that the FCR calculation should include a rate of return that reflects the stand-alone risk of the UCB/POR assets.

Ameren also mischaracterizes Staff's analysis by asserting that Ms. Phipps' recommendation is based on financing costs associated with the UCB/POR Program. (Ameren IB, pp. 12 and 15) To the contrary, Staff's analysis focuses on the risk of the UCB/POR assets and the market price for that risk whereas Ameren incorrectly focuses on the financing costs for long-term rate base assets. (Staff IB, pp. 38 and 40) Furthermore, Staff's revised recommendation of 5.3% for the rate of return on common equity is based on the AIU BBB credit ratings. (*Id*., p. 41) This renders moot Ameren's arguments against using an AAA bond yield to estimate the investor-required rate of return for unrecovered UCB/POR costs. (Ameren IB, p. 14)

Ameren asserts, "[c]urrent market conditions dictate that higher returns are being expected due to the economic slowdown and crisis in the credit markets. These would point to higher expected returns, certainly nothing close to a 3.9% return." (*Id*.) Attempting to support his argument, Ameren witness Hughes describes recent long-term debt issuances by IP and CILCO, which carried coupon rates of 9.75% and 8.875%, respectively. (Ameren Exhibit 5.0, lines 99-101) IP and CILCO issued bonds in October and December 2008, respectively. (Tr., pp. 53-54) Long-term debt rates were much higher during the last quarter of 2008 (October through December) than they are today.

Specifically, during October 2008, Ohio Edison Company, a Baa1/BBB+-rated utility, issued 10-year secured bonds with an 8.25% coupon rate. In comparison, during March 2009, Consumers Energy, a Baa1/BBB-rated utility, issued 10-year secured bonds with a 6.70% coupon rate. (Tr., April 6, 2009, pp. 55-56) Moreover, Staff's 5.3% common equity rate of return for the UCB/POR assets equals is the current yield on five-year, BBB-rated utility bonds. (Ameren Cross Exhibit 1) Clearly, the 2008 AIU debt issuances that Mr. Hughes relies upon to support using the AIU cost of capital in the FCR calculation are much higher than the rate of return on BBB-rated utility bonds that investors require today.

Ameren claims that using Staff's rate of return recommendation would degrade the AIU financial positions. (Ameren IB, pp. 13 and 15) This argument is baseless; in fact, Ameren never analyzed how either the AIU proposal or Staff's recommendation would affect the Companies' financial positions. Ameren also alleges that, "[t]he overwhelming evidence shows that, if Ms. Phipps's recommendation is accepted, the AIU will not recover their true costs and the UCB/POR project will erode the allowed equity return that the Commission has allowed for other AIU rate base assets." (*Id*., p.

15) Ameren's arguments are misplaced given that the UCB/POR assets are not rate base assets, and the AIU proposal provides for cost recovery via a tariff rider mechanism rather than a traditional rate proceeding. Thus, assigning the UCB/POR assets a rate of return that reflects their stand-alone risk would not erode the allowed equity return the Commission authorized for other rate base assets.

To support using the AIU cost of capital in the FCR calculation, Ameren claims:

> …UCB/POR assets are not distinguishable from any other assets the AIU have to finance. There is no distinction between financing POR startup costs, pole costs, transformer costs or any other capitalized costs. The reality is the AIU cannot call Bank XYZ and ask for a 3.9% rate of interest for debt to pay for UCB/POR start-up costs. AIU cannot issue separate mortgages, for special LLCs/joint ventures or arrange for project financing that will isolate financing these capitalized costs for some preferred low interest rate… The cost of capital for a utility is equal to the amount investors and lenders expect when looking at the companies as a whole. Current project mixes are part of a risk assessment that investors make, and many factors are weighed…It is not reasonable to expect Investor ABC to buy $3 million dollars of stock or provide $3 million dollars of equity with the understanding that AIU could only provide a 3.9% rate of return.

(*Id*., pp. 13-14)

The Staff IB explains in detail that the weighted average of the required rates of return of the assets a company holds determines its weighted-average cost of capital (not the other way around) and that both financial theory and empirical evidence confirm that the investor-required rate of return is a function of risk. (Staff IB, pp. 36-38)

Ameren also argues:

> …Ms. Phipps' proposal understates real financing costs associated with this project – costs which must be capitalized, not expensed. Capitalized expenses result in the usage of debt and equity in a manner consistent with any other AIU capitalized expenses, and should earn a 10.65% return on equity, consistent with the last AIU rate case.

(Ameren IB, p. 13)

Similarly, Ameren asserts, "[t]he evidence shows that, particularly in this difficult economic climate, it is reasonable and in fact conservative to allow the same rate of return on the UCB/POR startup costs as the Commission allowed for any other capitalized assets in the last AIU rate case." (*Id*., p. 15)

Even if AIU financing costs were relevant to assessing the investor-required rate of return for UCB/POR assets – which they are not – Ameren overstates the financing costs associated with UCB/POR assets. As shown on Ameren Exhibit 8.4, page 10, the AIU cost estimate for UCB/POR assets includes an allowance for funds used during construction ("AFUDC"). Specifically, Ameren assumes a 4% AFUDC rate, rather than the 8.01 to 8.68% rates of return on rate base authorized in Ameren's last rate case. (Order, Docket Nos. 07-0585 – 07-0590 (Cons.), September 24, 2008, pp. 217-218) Importantly, a 4% financing cost is much closer to Staff's 5.78% rate of return recommendation (comprising a 5.3% cost of common equity and 6.7% <u>embedded</u> cost of debt) than the AIU electric delivery services cost of capital. As such, authorizing a 5.78% rate of return on UCB/POR assets would permit AIU a return commensurate with the risk of the UCB/POR assets; coincidently, that rate of return would also permit AIU to recover its true financing costs for the UCB/POR assets. In contrast, authorizing a 10.65% rate of return on common equity for UCB/POR assets would permit AIU to recover from customers via the UCB/POR Program Charge a rate of return on unrecovered UCB/POR assets that exceeds the Companies' assumed 4% borrowing rate on capitalized costs, which profits would accrue solely to shareholders.

For all of the foregoing reasons, the Commission should adopt Staff's revised 5.3% rate of return on equity, which produces an FCR that equals 24.44%.

C. Amortization/Recovery Period of Costs

Ameren acknowledged that Staff's primary recommendation is to use a five-year cost recovery period. (Ameren IB, p. 5) However, Staff again points out that its recommendation is not driven by the standard book accounting life for some of the costs to be recovered. Staff recommends that the Commission avoid using Ameren's accounting rationale as the basis for adopting a five-year cost recovery period. Staff believes that the cost recovery period ultimately adopted needs to meet broader public interest demands and circumstances differ from one situation to the next. (Staff IB, p. 46) In this case, a five-year cost recovery period is not inappropriate and it coincides with the typical book accounting life for IT investments, a major portion of the costs to be recovered. (*Id*., p. 47)

In addition, the Commission should note in its Final Order that the UCB/POR discount rate calculation will continue to include a positive Balance Factor after the initial five years of the service. (*Id.*) Staff recommends that the Commission determine the level of such a future Balance Factor, as well as the number of additional years the Balance Factor should be used, at the end of the proposed five-year cost recovery period. This proposal seems to also be supported by Ameren. (Ameren IB, p. 16)

D. "All-In"/"All-Out" Rule

Ameren, ICEA, RESA, and DRI (the "MOU parties") parties entered into the MOU which addresses several unresolved issues in the instant proceeding. With respect to the "All-In"/"All-Out" issue, the MOU parties agreed to the following:

1. The UCB/POR section of AIU's proposed Supplier Terms and Conditions tariff should not apply the so-called "All-In or All-Out"

provision to the ability of a RES to utilize the UCB/POR program for its non-residential customers in the DS-2 and DS-3 customer classes.

2. The UCB/POR section of AIU's proposed Supplier Terms and Conditions tariff should limit the application of the "All-In or All-Out" provision to the residential rate class.

3. The Parties agree to work through an Office of Retail Market Development Stakeholder process to address a possible further limitation or exception of the application of the "All-In or All-Out" provision to residential customers that are part of an aggregation program, affording opportunity for stakeholder comment. AIU, RESA, ICEA, and Dominion agree to initiate discussion of this issue in this stakeholder process. The Parties understand that implementation of any results of this stakeholder process would need to become the subject of a tariff or other Illinois Commerce Commission proceeding, should the Stakeholder group and the AIU jointly agree to pursue implementation.

4. AIU agrees to not object to the recommendation of ICC Staff Witness Clausen that appears on p. 14 of his rebuttal testimony whereby AIU will track the number of commercial SBO accounts and Dual Bill accounts for suppliers that also use the UCB/POR service for a period of twelve months following the effective date of the applicable tariffs and report on how this activity would effect AIU's bad debt for the twelve month period being tracked relative to AIU's average historical bad debt rate.

(Ameren IB, Appendix A, pp. 1-2)

Staff has no objection to Ameren's proposed "All-In"/"All-Out" provision as modified in the MOU.

E. Definition of Power and Energy

The MOU also addresses the Definition of Power and Energy Service issue. In this regard, the MOU parties agreed to the following:

> The parties agree that in furtherance of the implementation of both Public Act 95-0700 and 95-1072 in consistent fashion, the proposed AIU tariffs should be revised to reflect the statement below:

> Power and Energy Service
>
> Power and Energy Service for purposes of the UCB/POR Program refers to the RES charges included in the receivables purchased by the Company and shall include such charges for Power and Energy service the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements. Such charges may also include charges for Transmission Services and related Ancillary Transmission Services and supply products that utilize renewable energy credits, represent alternative compliance payments or other appropriate means of establishing compliance with the renewable portfolio standards as set forth in Public Act 95-1027, the Public Utilities Act, and/or Administrative Rules of the Commission. The accounts receivables purchased for the RES shall not include items such as early termination fees or fees for value added service.

Staff has no objection to Ameren's proposed definition of Power and Energy Service provision as modified in the MOU.

The AG, however, argues that:

> Customers need to be able to compare the price of a utility supply product with the price of a RES supply product as accurately as possible.
>
> * * *
>
> The definition proposed by AIU is perfectly acceptable for achieving that goal but the Commission can go one step further to ensure customers have the tools they need to enter this new market. The Commission should require that power and energy services, as defined in the AIU tariffs, be expressed on a per kilowatt hour charge basis.

(AG IB, pp. 7-8)

Staff shares the desire for customers to be able to compare products and services of different providers. However, it is not clear to Staff that customers will benefit if certain pricing structures are directly disallowed. As Staff explained, a variety of à la carte and package options exist for both landline and mobile telephone services, which would not be possible with strict uniform pricing requirements. (Staff IB, p. 53) Mobile phone service options typically include a certain number of minutes per month and such a pricing structure would not be available if the providers were required to only offer services that are strictly expressed on a per-minute charge basis. In addition, existing pricing disclosure requirements in both the Act and 83 Ill. Adm. Code 451 require RES to provide customers with written information prior to any supplier switch that discloses the prices, terms and conditions of the products and services being sold to the customer. (*Id.*) Staff, for these reasons, is not in favor of limiting products and services to those expressed on a per kilowatt hour charge basis.

F. CUB's Consumer Protections

CUB argues in its IB that Ameren's dispute resolution process does not address CUB's concerns since it requires four calls by a consumer in order to dispute a charge. (CUB IB, p. 11) As stated in Staff's IB, Ameren has agreed to provide contact information for the ICC's Consumer Services Division upon a customer's initial contact with Ameren, thus reducing the number of calls necessary for a customer to dispute a charge. (Staff IB, p. 6)

It is also important to point out a misinterpretation of Staff's position by CUB. In its IB, CUB states that "Staff witness Pound agrees with Mr. McDaniel regarding the need for a dispute resolution process, and recommends that such process be codified in the AIU tariffs when they are re-filed, in order to ensure transparency and accountability." (CUB IB, p. 11) However, Staff witness Pound testified that, in her opinion, a consistent process could be implemented to handle RES disputed charges without specific tariff language detailing each step in the process and recommended against trying to detail those processes in Ameren's UCB/POR tariff. (ICC Staff Exhibit 9.0R, p. 12)

In addition, CUB apparently did not take into account that Ameren has agreed to incorporate Staff's recommendations regarding the disputed charges definition and payment due date language when it claimed that Ameren is in the development phase of the dispute resolution process for the UCB/POR Program. (CUB IB, p. 9) As Staff stated in its IB, Ameren's agreement to incorporate Staff's suggestions for the definition of disputed charges and the Payment Due Date UCB/POR Program section of Ameren's STC, in addition to the explanation of Ameren's suspend charge mechanism for disputed charges, sets forth a fair and clear dispute resolution process for participants of Ameren's UCB/POR Program. (Staff IB, p. 7)

CUB also states in its IB that "[i]t is noteworthy that Staff witness Pound agrees with McDaniel that additional consumer education on the ICC's website is necessary and comments that Ameren intends to implement a shopping website for consumers to compare electric supply offerings similar to New York's "Power to Choose" website." (CUB IB, p. 10) To clarify Staff's position, Ms. Pound did agree with Mr. McDaniel that additional consumer education on the ICC's website will be necessary. However, Staff witness Pound did not testify that Ameren intends to implement a shopping website for consumers to compare electric supply offerings similar to New York's "Power to Choose" website. (ICC Staff Exhibit 9.0R, p. 8)

Accordingly, Staff continues to recommend that the Commission not consider CUB's recommendation to reject Ameren's proposed UCB/POR Program.

G. Other – Use of Effective Date

In rebuttal testimony, AIU witness Pearson agreed to the following tariff revisions on 3rd Revised Sheets 5.025 and 5.027, respectively, (Ameren Exhibit 4.0-2REV, p. 7) proposed by Staff witness Clausen (ICC Staff Exhibit 3.0, p. 26):

> The First Reconciliation Period will cover the period from <u>the effective date of this tariff</u> through December 2011 (First Reconciliation Period).
>
> * * *
>
> Ultimately, any unrecovered UCB Start-Up Costs at the end of the five-year period (<u>five years from the effective date of this tariff</u>) shall be recovered from Eligible Customers via the ARA component of Factor USC included in the UCB/POR Program 561 Charges.

However, in its IB, Ameren now states that “the AIU have concluded that using the effective date creates pragmatic and administrative concerns due to the resulting mismatch that will occur between the reconciliation period and UCB/POR “programs years” that drive other mechanics of the tariff.” (Ameren IB, p. 22)

Staff believes that the issue is not about pragmatic and administrative concerns but rather something more fundamental. The issue is whether the cost recovery period is five years or something less than five years. Under Ameren’s proposed tariff language, the cost recovery period would end on June 1, 2014. While the effective date of the instant tariffs are unknown at this point, it is safe to say the effective date will not be June 1, 2009, thus leaving less than five years for the total cost recovery period. These proposed tariffs were drafted by Ameren sometime before September 2008 and therefore, well before an effective date could be estimated with much certainty. However, Staff was in agreement that a Program Year from June through May is appropriate and that reconciliation periods should conclude at the end of a calendar year. Hence, Staff viewed the numerous tariff references to June 2009 as simply placeholders because the effective date of the tariffs could not be known until much later. The proposed tariffs even mention that "the initial Program Year may begin after June 1, 2009." (3rd Revised Sheet No. 5.018) As a result, when Staff witness Clausen recommended the two tariff changes cited above, it was mainly to confirm that the ultimate cost recovery period is five years, regardless of the effective date of the tariffs. Once Ameren indicated its agreement with the proposed language change in its rebuttal testimony, Staff saw no need to propose that all tariff references to June 2009 be changed to "the effective date of this tariff." However, given Ameren's change of position in its IB, Staff feels compelled to propose additional language changes that will clarify that the cost recovery period will be a full five years from the effective date of the tariffs (or seven years if the Commission so determines).

As such, Staff proposes to make the following addition to the definition of "Program Year" in both the STC (3rd Revised Sheet No. 5.018) and SCC tariff. Staff recommends that the definition read as follows:

> The Program Year shall be the 12 month period beginning June 1 and ending May 31 of the subsequent year. The initial Program Year may begin after June 1, 2009. <u>The final Program Year will cover the period from June 1, 2014 until the end of five years from the effective date of this tariff.</u>

In addition, in order to eliminate any confusion at the time of the compliance filings, it is Staff's recommendation that the Commission's Final Order in this proceeding reflect that the cost recovery period will be a full five (or seven) years from the effective date of the tariffs.

IV. CONCLUSION

For the reasons set forth in its Initial Brief and this Reply Brief, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations to the Companies' proposed UCB/POR Program and that the Companies' proposed tariff changes be modified in accordance with Staff's recommendations in Appendices A and B attached to its Initial Brief, with the additions discussed *supra*, in Section III. Unresolved Issues, D. "All-In"/"All-Out" Rule, E. Definition of Power and Energy, and G. Other – Use of Effective Date.

Respectfully submitted,

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